

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-070520
	:	TRIAL NO. B-0609072
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
	:	
LEWIS POTTS,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant, Lewis Potts, appeals the judgment of the Hamilton County Court of Common Pleas convicting him of four counts of aggravated arson and two counts of arson. He was convicted after a jury trial.

One night, shortly before 12:00 a.m., Rebecca Jones saw two men approach a building that housed the Allied Lock and Door Service in the Price Hill neighborhood of Cincinnati. Jones testified that the two men had been carrying containers of beer and that, except for them, the streets had been essentially deserted.

Moments after Jones saw the two men approach the building, a fire broke out in a vacant residence in back of the Allied Lock business. Firefighters responded to the scene, and as they were extinguishing the fire, they heard that a dumpster fire had started at a KFC restaurant on the same block.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Then, shortly after the KFC fire had started, a fire broke out on the porch of a residence on Regina Avenue, several blocks away from the KFC fire. The residents of the house were inside the home when the fire started. A witness testified that she had seen Potts and a person whom she later identified as Jason Schmidt running away from the home just before she saw the fire. The fire had been started on the furniture on the front porch and had damaged the home before being extinguished.

Police officers were alerted to the rash of fires and apprehended Potts and Schmidt on Academy Avenue, about a block away from the fire on Regina. One of the men was carrying a porch-furniture cushion when the officers approached. While the officers were taking the pair into custody, they saw the light of a fire on Academy three or four houses from where they had apprehended Potts and Schmidt. Once again, the fire had been started on porch furniture while the residents were at home.

The police took Potts and Schmidt into custody. Schmidt admitted that the pair had followed the path of the fires, but both men denied any involvement in the crimes.

Fire investigators determined that each of the four fires had been deliberately set. DNA evidence taken from a beer can near the KFC dumpster matched a DNA sample taken from Schmidt.

Potts and Schmidt did not present any evidence at trial, and the jury found them both guilty. The court sentenced Potts to an aggregate term of 18 years' imprisonment.

In his first and second assignments of error, Potts now argues that the convictions were based on insufficient evidence and were against the manifest weight of the evidence. We address the assignments together.

In the review of the sufficiency of the evidence to support a conviction, the relevant inquiry for the appellate court "is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the

essential elements of the crime beyond a reasonable doubt.”² To reverse a conviction on the manifest weight of the evidence, a reviewing court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and conclude that, in resolving the conflicts in the evidence, the trier of fact clearly lost its way and created a manifest miscarriage of justice.³

The aggravated-arson statute, R.C. 2909.02(A), provides that “[n]o person, by means of fire or explosion, shall knowingly * * * (1) Create a substantial risk of serious physical harm to any person other than the offender; (2) Cause physical harm to any occupied structure.” R.C. 2909.03(A)(1), governing arson, states that “[n]o person, by means of fire or explosion, * * * shall knowingly * * * [c]ause, or create a substantial risk of, physical harm to any property of another without the other person’s consent.”

In this case, the convictions were proper. Schmidt admitted that he and Potts had been present at the scenes of four fires that had occurred within minutes of each other in a narrowly circumscribed area. DNA evidence linked Schmidt to the KFC fire, and he and Potts were seen fleeing from the Regina Avenue fire as it began. One of the men was carrying a porch-furniture cushion when approached by the police, further indicating the pair’s involvement in the offenses. Under these circumstances, the jury could have reasonably inferred that Potts had been involved in setting each of the fires. We overrule the first and second assignments of error.

In the third assignment of error, Potts contends that he was denied the effective assistance of trial counsel. He concedes that the alleged instances of

² *State v. Waddy* (1992), 63 Ohio St.3d 424, 430, 588 N.E.2d 819.

³ *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

counsel's deficiencies do not appear in the record,⁴ but he requests this court to review the record to determine the effectiveness of counsel's performance. We have done so and have found no prejudicial errors on the part of trial counsel.⁵ Accordingly, we overrule the third assignment of error.

In his fourth and final assignment of error, Potts argues that the court did not have jurisdiction to impose consecutive sentences. The Supreme Court of Ohio has explicitly recognized the authority of a trial court to impose consecutive sentences,⁶ and we overrule the fourth assignment of error.

The judgment of the trial court is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27.

HILDEBRANDT, P.J., PAINTER and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on October 15, 2008
per order of the Court _____.
Presiding Judge

⁴ See App.R. 12(A)(2).

⁵ *Strickland v. Washington* (1984), 466 U.S. 668, 686, 104 S.Ct. 2052; *State v. Bradley* (1989), 42 Ohio St.3d 136, 538 N.E.2d 373, paragraphs two and three of the syllabus.

⁶ *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470, paragraph four of the syllabus.